

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Sections 73.62 )  
and 73.1350 of the ) MB Docket No. 03-151  
Commission's Rules )

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: July 1, 2003**

**Released: July 7, 2003**

**Comments Date: August 29, 2003**

**Reply Comments Date: September 18, 2003**

By the Commission

**I. INTRODUCTION**

1 We issue this Notice of Proposed Rulemaking ("Notice") to resolve an apparent conflict between Sections 73.62 and 73.1350(d)(2) of the Commission's rules regarding the operation of AM stations with directional antennas.<sup>1</sup> The issue was initially raised in a Petition for Declaratory Ruling filed pursuant to Section 1.2 of the Commission's rules by Pepper and Corazzini, LLP ("P&C") on behalf of various AM broadcast licensees.<sup>2</sup> Because the issues raised may involve a substantive amendment of the Commission's rules, the proper vehicle for resolving this proceeding is a Notice of Proposed Rulemaking.<sup>3</sup>

2 Both of these rules are invoked when an AM broadcast station's directional antenna operating parameters<sup>4</sup> and/or monitoring point field strengths<sup>5</sup> exceed operating tolerances. Section 73.62 of the rules, which specifically governs directional antenna system tolerances, provides that, whenever the operating parameters of a directional antenna cannot be maintained within the tolerances specified in the rule, an AM broadcast station has twenty-four hours within which to identify any excessive monitoring point field strengths followed by three hours to take corrective action.<sup>6</sup> In contrast, Section 73.1350(d)(2) of the rules, which addresses transmission system operation, requires that, in the event of any condition of

<sup>1</sup> 47 C.F.R. §§ 73.62 and 73.1350(d)(2).

<sup>2</sup> 47 C.F.R. § 1.2. See *In the Matter of Petition for Declaratory Ruling Regarding Sections 73.1350(d) and 73.62 of the Commission's Rules* (January 17, 2002). Since the filing of this Petition, P&C has merged with the law firm of Womble, Carlyle, Sandridge & Rice, PLLC.

<sup>3</sup> Because we initiate the instant Notice of Proposed Rulemaking, P&C's Petition for Declaratory Ruling is hereby dismissed as moot. We acknowledge, however, that we have relied on some of the substantive information presented by P&C in forming our analysis.

<sup>4</sup> The operating parameters of an AM directional antenna are the relative amplitudes and phases of the currents in the individual towers of the array. Stations that use directional antennas are required to have an FCC authorized antenna monitor to measure the operating parameters. See 47 C.F.R. §§ 73.62, 73.69.

<sup>5</sup> Each AM station using a directional antenna must make field strength measurements at the monitoring point locations specified in the instrument of authorization, as often as necessary, to ensure that the fields at those points do not exceed the values specified in the station authorization. See 47 C.F.R. § 73.61.

<sup>6</sup> 47 C.F.R. § 73.62(b).

antenna parameters or monitoring points out of tolerance, station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation.<sup>7</sup> This inconsistent directive in our rules leaves AM licensees unclear as to the correct course of action they must take when they observe out-of-tolerance indications. Clarity in our rules is especially necessary when the rules may require that broadcast operations terminate within a matter of minutes. In such situations, termination of operations would be disruptive to programming and, in some cases, broadcast listeners may be deprived of information regarding hazardous weather or other emergency conditions. Moreover, broadcast stations may be faced with fines and forfeitures if found not to be in compliance with our rules. This Notice initiates a proceeding to harmonize these rules.

## II. DISCUSSION

3. At issue in this proceeding is what corrective actions an AM broadcast station licensee must take when directional antenna operating parameters exceed the +/- 5% current and +/- 3 degree phase tolerances required by the rules, or when any monitoring point field strength exceeds the value specified on the station license.<sup>8</sup> Section 73.1350(d) of the rules requires that, with certain exceptions listed in paragraph (e), if a broadcast station is operating in a manner that is not in compliance with the technical rules or the terms of the station authorization, broadcast operation must be terminated within *three hours*.<sup>9</sup>

4. Section 73.1350(e) includes a list of several specific technical problems with references to applicable rule sections, and instructs that station operation may continue as long as the technical problem encountered is among those listed and as long as the station complies with the provisions of the specified rule section.<sup>10</sup> Section 73.1350(e)(1) instructs an AM station licensee experiencing problems with its directional antenna to refer to Section 73.62 of the Commission's rules.<sup>11</sup> This rule allows a licensee 24 hours to measure and log all directional antenna monitoring points and provides that, if any monitoring point exceeds its specified limit, the licensee must either terminate operation within *3 hours* or reduce power to eliminate any excessive radiation.<sup>12</sup> However, Section 73.1350(d)(2) of the Commission's rules lists additional examples of conditions that require termination of operation for AM stations. These examples include "any mode of operation" not specified by the station license for the pertinent time of day or hours of operation and any out of tolerance condition of antenna parameters or monitoring points.<sup>13</sup> In apparent contradiction to Section 73.62, this section of the rules requires that operation must be terminated within *three minutes* unless antenna input power is reduced sufficiently to eliminate any excess radiation.<sup>14</sup>

5. In light of the above, an AM licensee is faced with an apparent conflict when trying to determine what course of action to take when its directional antenna operating parameters are found not to comply with licensed tolerances. Section 73.62 allows 24 hours to check monitoring points,<sup>15</sup> and then if any monitoring point exceeds its specified limit, a three hour period to terminate operation or reduce

<sup>7</sup> 47 C.F.R. § 73.1350(d)(2)

<sup>8</sup> See 47 C.F.R. § 73.62(a)

<sup>9</sup> 47 C.F.R. § 73.1350(d) (emphasis added)

<sup>10</sup> 47 C.F.R. § 73.1350(e)

<sup>11</sup> 47 C.F.R. § 73.1350(e)(1)

<sup>12</sup> 47 C.F.R. § 73.62(b)(1), (3) & (5) (emphasis added)

<sup>13</sup> 47 C.F.R. § 73.1350(d)(2)

<sup>14</sup> *Id.* (emphasis added)

<sup>15</sup> 47 C.F.R. § 73.62(b)(5)

power.<sup>16</sup> In contrast, Section 73.1350(d)(2) requires that “*any condition of antenna parameters or monitoring points out of the tolerances specified elsewhere in this part or by the station's instrument or authorization*” requires termination of operation in three minutes unless power is reduced sufficiently to eliminate any excess radiation.<sup>17</sup>

6 We recognize that almost all AM broadcast station directional antenna arrays experience some amount of instability. A directional antenna array occasionally may be affected by unfavorable weather conditions or other environmental factors to such an extent that the monitoring system indicates short-term out-of-tolerance operation. Such out-of-tolerance indications during heavy rain, snow or icing, or during abrupt and substantial changes in temperature or humidity, including consequent effects on ground conductivity, may not warrant immediate corrective action.<sup>18</sup>

7 We tentatively conclude that the three-minute rule in Section 73.1350(d)(2) of our rules is excessively stringent and was not intended to apply to instances of minor out-of-tolerance AM directional antenna operating parameters. We tentatively conclude that Sections 73.62 and 73.1350 should be revised to delineate clearly those situations that require 24-hour, three-hour and/or three-minute responses by AM licensees, as well as by FM and TV licensees. A requirement to terminate operation within three minutes should apply only to catastrophic events that are likely to cause significant disruption to the operation of other stations or that pose a threat to life or property. A requirement to terminate operation within three hours should apply to instances of out-of-tolerance operation that are likely to result in minor interference to other stations. We believe that, in the case of minor variances of operating parameters caused by environmental changes, the provision in Section 73.62 which allows 24 hours to determine the existence of an out-of-tolerance condition for an AM directional antenna system is reasonable.<sup>19</sup> Because Section 73.1350 applies equally to AM, FM and TV licensees, while Section 73.62 applies only to AM licensees, we believe that the language currently included in Section 73.1350(d) that specifically addresses AM directional antenna systems should be relocated to Section 73.62, and that section retitled accordingly.

8 We seek comment as to whether our tentative conclusions with regard to revising Sections 73.1350 and 73.62 are appropriate.<sup>20</sup> We seek comment as to other ways to best resolve the conflict presented between Sections 73.1350 and 73.62 of the Commission's rules. We seek comment as to other specific language changes that should be made to either of these rules that would best eliminate any confusion.

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<sup>16</sup> 47 C.F.R. § 73.62(b)(3).

<sup>17</sup> 47 C.F.R. § 73.1350(d)(2) (emphasis added).

<sup>18</sup> See Amendment of § 73.52 of the Commission's Rules and Regulations with respect to relative phase tolerances for directional AM stations, 95 FCC 2d 1062, 1066 (1983), see also P&C Petition for Declaratory Ruling at 5 and attached Engineering Statement prepared by Mullaney Engineering, Inc. at 2-3.

<sup>19</sup> The monitoring points of an AM directional antenna (numbering between one and approximately six, depending on the directional pattern) generally are located between 3 and 6 kilometers from the transmitter site and in various directions, at locations that may fall on opposite sides of the city of license. In the case of a station that serves a major metropolitan area via a relatively complex directional antenna, driving to and measuring each monitor point can take several hours. Taking into account that an AM station may be licensed for as many as three separate directional patterns (daytime, nighttime and critical hours), each with its own set of monitoring points, 24 hours is not an unreasonable period of time for completing this task.

<sup>20</sup> See Appendix A for complete text of proposed rules.

### III. ADMINISTRATIVE MATTERS

#### A. INITIAL REGULATORY FLEXIBILITY ACT STATEMENT

9. *Regulatory Flexibility Act* As required by the Regulatory Flexibility Act,<sup>21</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA.

#### B. INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

10. This Notice contains no proposed or modified information collection.

#### C. PROCEDURAL PROVISIONS

11. *Authority.* This *Notice of Proposed Rulemaking* is issued pursuant to authority contained in §§ 1, 4(i), 4(j), 303(r), 403 of the Communications Act of 1934, as amended.

12. *Ex Parte Rules – permit-but-disclose* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

13. *Accessibility Information.* Accessible formats of this *Notice of Proposed Rulemaking* (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

14. *Comment Information.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **August 29, 2003** and reply comments on or before **September 18, 2003**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

15. Comments filed through the ECFS can be sent as an electronic file via the Internet to [<http://www.fcc.gov/e-file/ecfs.html>](http://www.fcc.gov/e-file/ecfs.html). Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper

<sup>21</sup> See 5 U.S.C. § 603.

filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8.00 a.m. to 7.00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

#### IV. ORDERING CLAUSES

16. **IT IS ORDERED** that, pursuant to Sections 1, 4(i) and (j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 301, 303, and 403, **COMMENT IS HEREBY SOUGHT** on the analysis, questions, discussions and statements of issues in this Notice of Proposed Rulemaking.

17. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>22</sup> See 5 U.S.C. § 603(a).

**APPENDIX A**

Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows.

Part 73 – Radio Broadcast Services

- 1 The authority citation for Part 73 continues to read as follows.

**AUTHORITY:** 47 U.S.C. 154, 303, 334, and 336

- 2 Section 73.1350(b)(2) is proposed to be revised as follows

**§ 73.1350 Transmission system operation.**

(b) The licensee must designate a chief operator in accordance with § 73.1870. The licensee may designate one or more technically competent persons to adjust the transmitter operating parameters for compliance with the technical rules and the station authorization.

(2) The transmitter control personnel must have the capability to turn the transmitter off at all times. If the personnel are at a remote location, the control system must provide this capability continuously or must include an alternate method of acquiring control that can satisfy the requirement of paragraph (e) of this section that operation be terminated within 3 minutes.

- 3 Section 73.1350(d) is proposed to be revised as follows:

**§ 73.1350 Transmission system operation.**

(d) In the event that a broadcast station is operating in a manner that is not in compliance with the applicable technical rules set forth elsewhere in this part or the terms of the station authorization, and the condition is not listed in paragraph (e) or (f) of this section, broadcast operation must be terminated within three hours unless antenna input power is reduced sufficiently to eliminate any excess radiation power. Examples of conditions that require termination of operation within three hours include excessive power, excessive modulation or the emission of spurious signals that do not result in harmful interference.

[The current subsections (1) - (3) would be deleted].

- 4 A new Section 73.1350(e) of the rules is proposed to be added as follows.

**§ 73.1350 Transmission system operation**

(e) If a broadcast station is operating in a manner that poses a threat to life or property or that is likely to significantly disrupt the operation of other stations, immediate corrective action is required. In such cases, operation must be terminated within three minutes unless antenna input power is reduced sufficiently to eliminate any excess radiation. Examples of conditions that require immediate corrective action include

the emission of spurious signals that cause harmful interference, any mode of operation not specified by the station license for the pertinent time of day, or operation substantially at variance from the authorized radiation pattern.

[The current remaining Sections (e) through (h) would be redesignated as Sections (f) through (i)].

5 Section 73.62 is proposed to be revised as follows:

**§ 73.62 Directional antenna system operation and tolerances**

(a) Each AM station operating a directional antenna must maintain the relative amplitudes of the antenna currents, as indicated by the antenna monitor, within 5% of the values specified on the instrument of authorization. Directional antenna relative phases must be maintained within 3 degrees of the values specified on the instrument of authorization.

(b) In the event of a failure of system components, improper pattern switching or any other event that results in operation substantially at variance from the radiation pattern specified in the instrument of authorization for the pertinent time of day, operation must be terminated within three minutes unless power can be reduced sufficiently to eliminate any excessive radiation. See Section 73.1350(e).

(c) In the event of minor variations of directional antenna operating parameters from the tolerances specified in paragraph (a) of this section, the following procedures will apply:

(1) The licensee shall measure and log every monitoring point at least once for each mode of directional operation. Subsequent variations in operating parameters will require the remeasuring and logging of every monitoring point to assure that the authorized monitoring point limits are not being exceeded. The licensee will be permitted 24 hours to accomplish these actions, provided that, the date and time of the failure to maintain proper operating parameters has been recorded in the station log.

(2) Provided each monitoring point is within its specified limit, operation may continue for a period up to 30 days before a request for Special Temporary Authority (STA) must be filed, pursuant to paragraph (c)(4) of this section, to operate with parameters at variance from the provisions of paragraph (a) of this section.

(3) If any monitoring point exceeds its specified limit, the licensee must either terminate operation within three hours or reduce power in accordance with the applicable provisions of Section 73.1350(d), in order to eliminate any possibility of interference or excessive radiation in any direction.

(4) If operation pursuant to paragraph (c)(3) of this section is necessary, or before the 30 day period specified in paragraph (c)(2) of

this section expires, the licensee must request a Special Temporary Authority (STA) in accordance with Section 73.1635 to continue operation with parameters at variance and/or with reduced power along with a statement certifying that all monitoring points will be continuously maintained within their specified limits

(d) In any other situation in which it might reasonably be anticipated that the operating parameters might vary out of tolerance (such as planned array repairs or adjustment and proofing procedures), the licensee shall, before such activity is undertaken, obtain a Special Temporary Authority (STA) in accordance with Section 73.1635 in order to operate with parameters at variance and/or with reduced power as required to maintain all monitoring points within their specified limits.



## APPENDIX B

### INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),<sup>23</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in paragraph 15. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>24</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>25</sup>

**A. Need for, and Objectives of, the Proposed Rule Changes.** This Notice seeks comment on ways to remedy the apparent conflict between Sections 73.1350(d)(2) and 73.62 of the Commission's rules.<sup>26</sup> Both rules are invoked when an AM station's directional operating parameters and/or monitoring point field strengths exceed the required operating tolerances. Section 73.62 of the rules provides that an AM broadcast station has 24 hours within which to identify any excessive monitoring point readings followed by three hours to take corrective action.<sup>27</sup> By comparison, Section 73.1350(d)(2) of the rules requires that station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation.<sup>28</sup> It is important that this apparent conflict in our rules be addressed because these rules affect termination of broadcast operations, which may deprive listeners of necessary information regarding hazardous weather or other emergency conditions. In addition, if broadcasters are found not to be in compliance with these rules, they may face fines or have forfeiture action instituted against them.

**B. Legal Basis.** The authority for the action proposed in this Notice is contained in Sections 1, 4(i) and (j), 301, 303, 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 301, 303, and 403.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Changes Will Apply.** The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.<sup>29</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>30</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business

<sup>23</sup>See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>24</sup>See 5 U.S.C. § 603(a).

<sup>25</sup>See *id.*

<sup>26</sup>47 C.F.R. §§ 73.62 and 73.1350(d)(2).

<sup>27</sup>47 C.F.R. § 73.62.

<sup>28</sup>47 C.F.R. § 73.1350(d)(2).

<sup>29</sup>5 U.S.C. § 603(b)(3).

<sup>30</sup>5 U.S.C. § 601(6).

Act<sup>31</sup> A small business concern is one which (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration ("SBA")<sup>32</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field"<sup>33</sup> Nationwide as of 1992, there were approximately 275,801 small organizations.<sup>34</sup> "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000"<sup>35</sup> As of 1997, there were approximately 87,453 governmental entities in the United States<sup>36</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer

The proposed rule amendments to Sections 73.1350 and 73.62 will primarily apply to certain AM directional radio broadcasting licensees and potential licensees<sup>37</sup> The proposed amendments to Section 73.1350 would also affect FM broadcast stations in the event that any FM broadcast station operates in a manner that poses a threat to life or property or in a manner that is likely to cause significant disruption to the operation of other stations. The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business<sup>38</sup> Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public."<sup>39</sup> According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenues of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations<sup>40</sup> are included<sup>41</sup> Our estimate, therefore likely overstates the number of small businesses that might be affected by the proposed rules

<sup>31</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632) Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register"

<sup>32</sup> 15 U.S.C. § 632

<sup>33</sup> 5 U.S.C. § 601(5)

<sup>34</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration)

<sup>35</sup> 5 U.S.C. § 601(5)

<sup>36</sup> U.S. Census Bureau, Statistical Abstract of the United States 2000, Section 9, pages 299-300, Tables 490 and 492

<sup>37</sup> 47 C.F.R. §§ 73.62 and 73.1350

<sup>38</sup> See OMB, North American Industry Classification System United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

<sup>39</sup> *Id.*

<sup>40</sup> "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both" 13 C.F.R. § 121.103(a)(1)

<sup>41</sup> "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size" 13 C.F.R. § 121(a)(4)

The proposed amendments to Section 73.1350 would also affect television stations in the event that any television station operates in a manner that poses a threat to life or property or is likely to significantly disrupt the operation of other stations. The SBA defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business.<sup>42</sup> Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."<sup>43</sup> According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>44</sup> must be included. Our estimates, therefore, likely overstate the number of small entities that might be affected by the proposed rules because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

**D. Description of Projected Recording, Recordkeeping, and Other Compliance Requirements:** We do not expect that the proposed rule changes would impose any additional reporting or recordkeeping requirements.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered:** The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives. (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities, (3) the use of performance, rather than design, standards, and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

As indicated above, the Notice seeks comment on how to remedy an apparent conflict in the Commission's rules that affect AM broadcast stations that employ directional antennas. Amendment of one of the rules also may affect FM and television broadcast services. No alternatives to our proposal herein are mentioned because we anticipate no differential impact on smaller entities. However, we welcome comment on modifications of proposals if based on evidence of potential differential impact.

**F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.** None

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<sup>42</sup> See OMB, North American Industry Classification System United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

<sup>43</sup> OMB, North American Industry Classification System United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002). This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See *id.* at 502-05, NAICS code 51210 Motion Picture and Video Production, code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

<sup>44</sup> "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).